

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR.JUSTICE V.CHITAMBARESH**

**TUESDAY, THE 3RD DAY OF NOVEMBER 2015/12TH KARTHIKA, 1937**

**WP(C).No. 22460 of 2015 (F)**  
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**PETITIONER:**  
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**THE BOARD OF DIRECTORS OF THE KOLIYOOR SERVICE  
CO-OPERATIVE BANK LTD.NO.2665  
REPRESENTED BY ITS PRESIDENT  
KOLIYOOR, MUTTACADU,  
THIRUVANANTHAPURAM - 695 523.**

**BY ADVS.SRI.V.G.ARUN  
SRI.T.R.HARIKUMAR**

**RESPONDENTS:**  
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- 1. THE RETURNING OFFICER,  
KOLIYOOR SERVICE CO-OPERATIVE BANK LTD.  
NO.2665, KOLIYOOR, MUTTACADU  
THIRUVANANTHAPURAM - 695 523  
(UNIT INSPECTOR, MANACAUD  
OFFICE OF THE ASSISTANT REGISTRAR OF CO-OPERATIVE  
SOCIETIES (GENERAL)  
THIRUVANANTHAPURAM).**
- 2. THE ELECTORAL OFFICER,  
KOLIYOOR SERVICE CO-OPERATIVE BANK LTD.NO.2665  
KOLIYOOR, MUTTACADU  
THIRUVANANTHAPURAM - 695 523  
(ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES  
(GENERAL)  
THIRUVANANTHAPURAM).**
- 3. THE STATE CO-OPERATIVE ELECTION COMMISSION,  
CO-BANK TOWERS, PALAYAM,  
THIRUVANANTHAPURAM - 695 033.**
- 4. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES  
(GENERAL),  
THIRUVANANTHAPURAM - 695 001.**

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- 5. THE REGISTRAR OF CO-OPERATIVE SOCIETIES,  
THIRUVANANTHAPURAM - 695 001.**
- 6. THE STATE OF KERALA, REPRESENTED BY THE SECRETARY TO  
GOVERNMENT, CO-OPERATION (B) DEVELOPMENT  
GOVERNMENT SECRETARIAT  
THIRUVANANTHAPURAM - 695 001.**

**R3 TO R6 BY SPECIAL GOVERNMENT PLEADER SRI. D. SOMASUNDARAM**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
28.10.2015, ALONG WITH W.P.(C). NO. 23813/2015, THE COURT ON  
03.11.2015 DELIVERED THE FOLLOWING:**

**DCS**

**WP(C).No. 22460 of 2015 (F)**  
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**APPENDIX**

**PETITIONER(S)' EXHIBITS**  
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**P1: A TRUE COPY OF THE ELECTION NOTIFICATION NO.E(1)/2682/2015/SCEC  
DATED 29.06.2015**

**P1 (a): COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P1**

**P2: A TRUE COPY OF THE FINAL VOTERS LIST PUBLISHED BY THE  
ELECTORAL OFFICER ON 10.07.2015**

**P3: A TRUE COPY OF THE INTERIM ORDER DATED 21.07.2015 IN  
WPC.NO.21935/2015**

**RESPONDENT(S)' EXHIBITS:- NIL**  
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**/TRUE COPY/**

**P.A. TO JUDGE**

**DCS**

**“C.R.”**

**V.CHITAMBARESH,J.**

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**W.P.(C) Nos. 22460 & 23813 of 2015**  
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Dated this the 3<sup>rd</sup> day of November, 2015

**JUDGMENT**

Is there any taboo for the members of the erstwhile managing committee of a co-operative society to be a part of the administrative committee appointed on failure to constitute a successor managing committee in time ?

2. The Board of Directors of the Koliyoor Service Co-operative Bank Limited No. 2665 (the 'Society' for short) resolved on to 02.06.2015 to conduct an election to its managing committee on 02.08.2015. The notification by the State Co-operative Election Commission for the election on the date specified followed along with the appointment of the Electoral and Returning Officer. A final voters list was published on the basis of Section 16A of the Kerala Co-operative Societies Act, 1969 (the 'Act') and Rule 18A of the Kerala Co-operative Societies Rules, 1969 (the 'Rules').

The scrutiny of the nominations received were under way when the entire election process was stayed in W.P.(C). No. 21935/2015 wherein the applicability of Rule 18A of the Rules was inter alia questioned. It appears that the said writ petition has been clubbed with other writ petitions pending on the same issue and since been referred for consideration by a Full Bench of this Court. The long and short of it is that the legal question embroiled in the cases could not be resolved before the expiry of the term of the managing committee of the Society on 07.08.2015. The Board of Directors of the Society anticipating the appointment of an administrator or an administrative committee has filed W.P.(C). No. 22460/2015. The prayer therein is to extend the term of the managing committee till the next election and in the alternative to include three members thereof in the administrative committee of the Society.

3. The following interim order was passed on 24.07.2015 well ahead of the expiry of the term of the managing committee in W.P.(C). No. 22460/2015 after

hearing the Special Government Pleader also:

“The possibility of constituting an administrative committee comprising of the members of the present managing committee to manage the affairs of Koliyoor Service Co-operative Bank Limited shall be explored by the fourth respondent in the event of election not being held before the expiry of the term of the present managing committee. This is however subject to the condition that no proceedings for surcharge are pending against the members of the managing committee who are to be included in the administrative committee when formed.”

The Joint Registrar of Co-operative Societies (General) has accordingly appointed an administrative committee by order dated 30.07.2015 comprising of the President and two other members of the erstwhile managing committee. This order is challenged by a member of the Society in W.P.(C). No. 23813/2015 questioning the inclusion of the above members in the administrative committee. The petitioner therein contends that none of the members of the erstwhile managing committee shall be included in the administrative

committee of the Society. The petitioner adds that such inclusion militates against the ratio of the decision in **Joint Registrar v. Chatha [1999 (3) KLT 139]** rendered by a Division Bench of this Court. The petitioner seeks the appointment of an officer of the Co-operative Department as an administrator of the Society replacing the administrative committee in the circumstances.

4. I heard Mr. V.G. Arun, Advocate on behalf of the petitioner in W.P.(C).No. 22460/2015 and Mr. B.S. Swathi Kumar, Advocate on behalf of the petitioner in W.P.(C). No. 23813/2015 as well as Mr. D. Somasundaram, Special Government Pleader.

5. The first question to be considered is as to whether the term of the managing committee of the Society could be extended till the conduct of the next election as sought in W.P.(C). No. 22460/2015. The issue is no longer res integra in view of the decision in **Board of Directors of Kottappady Service Co-op. Bank v. The Joint Registrar [1994 (2) KLJ 795 (DB)]** which still holds the field. It has

been held therein that 'the statute does not contemplate the extension of the term of a committee prescribed by the bye-laws of the society under any circumstances'. The said decision has been followed in **District Industries Centre v. Kaithari Neithu Sahakarana Sangam [1999 (1) KLJ 885(DB)]** reiterating the same position. I am not persuaded to take a different view and hence reject the prayer for extension of the term of the managing committee of the Society respectfully following the decisions afore quoted.

6. The second question to be considered is as to whether the three members of the erstwhile managing committee could be included in the administrative committee as raised in W.P.(C). No. 23813/2015. A cursory look at Sections 32(1)(e) and 33(1)(b) of the Act is needed for answering this question and the provisions germane are extracted herein below:

**“32. Supersession of Committee.-**

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(e) Every member of the committee superseded under this section shall from the

date of order of such supersession stand disqualified to contest in the election to or to be nominated to the committee of any Society or to be appointed as an administrator in any society for two consecutive terms.

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- 33. Appointment of new committee or administrator on failure to constitute committee, etc.-** (1) Where the term of office of a committee has expired and a new committee has not been constituted, or where a no-confidence motion is passed by the general body against the existing committee or where the existing committee resigns enbloc or where vacancies occur in the committee either by resignation or otherwise and the number of remaining members cannot constitute the quorum for the meeting of the committee, or where the committee fails to hold its regular meeting consecutively for six months or where the Registrar is satisfied.

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(b) that a new committee is prevented from entering upon office or a new committee fails to enter upon office, on the date on which the term of office of the existing committee expires, the Registrar may, either suo motu or on

application of any member of the society, after intimating the Circle Co-operative Union, appoint one Administrator or an administrative committee consisting of not more than three individuals, who need not be member of the society, one among them as convener to manage the affairs of the society, for a period not exceeding six months as may be specified in the order, which period may, at the discretion of the Registrar and for reasons to be recorded in writing, be extended, from time to time, so, however, that the aggregate period shall not, in any case, exceed one year or till a new committee enters upon office, whichever is earlier.” (emphasis supplied)

Section 32 of the Act envisages the appointment of an administrator or administrative committee to a Society where the term of the managing committee is yet to expire and has instead been superseded. Section 33 of the Act envisages the appointment of an administrator or administrative committee to a Society on failure to constitute a managing committee in time. Only when the managing committee is superseded in terms of Section 32

of the Act does any of its members incur a disqualification to be included in the administrative committee soon after. The disqualification lingers on for two consecutive terms under Section 32(1)(e) of the Act and such member of the managing committee superseded cannot aspire to be in the administrative committee till such time. But there is no such embargo for any member of the managing committee to be included in the administrative committee appointed in terms of Section 33(1)(b) of the Act. A wide discretion is vested in the Registrar to appoint an administrator or an administrative committee consisting of not more than three individuals under Section 33(1)(b) of the Act. The statute is specific that the three members 'need not be' a member of the Society implying thereby that any member whomsoever could be included in the administrative committee. There is no taboo for a member of the managing committee to be part of the administrative committee appointed on failure to constitute a managing committee to succeed in time.

7. Much was argued by the petitioner in W.P.(C). No. 23831/2015 on the basis of the decision in **Joint Registrar v. Chatha [1999 (3) KLT 139]** wherein the following observations can be found:

“ In view of the above rulings, we are of the view that the members of the present managing committee, whose term has already expired, cannot be permitted to continue as administrative committee which would only amount to giving them power through back door.”

The 'rulings' relied on in the above decision are none other than **Kottappady Service Co-op. Bank's** case [1994 (2) KLJ 795 (DB)] and **Kaithari Neithu Sahakarana Sangam's** case [1999 (1) KLJ 885(DB)] cited supra. The said decisions dealt only with the question as to whether a managing committee of a Society could be permitted to continue in office after the expiry of its term when the Act is silent. The question whether the administrative committee appointed in terms of Section 33 of the Act could take in members of the erstwhile managing committee was never

considered. The omnibus observation in **Chatha's** case [1999 (3) KLT 139] that the members of the managing committee cannot continue in administrative committee has no precedential support. The same is obviously made without comprehending the ratio decidendi in **Kottappady Service Co-op. Bank's** case and **Kaithari Neithu Sahakarana Sangam's** case relied on. The distinction between Sections 32(1)(e) and 33(1)(b) of the Act in the matter of disqualification for members of the managing committee has been overlooked. I have no hesitation to hold that the decision in **Chatha's** case does not lay down the correct law and is without reference to the statutory provisions applicable. It can safely be declared that the decision in **Chatha's** case is per incurium (See: **A.R.Antulay v. R.S. Nayak [(1988) 2 SCC 602]** and **Govt. of Andhra Pradesh v. B. Satyanarayana Rao [(2000) 4 SCC 262]**).

8. It is the admitted case of either parties that no proceedings for surcharge have hitherto been initiated

against the members of the erstwhile managing committee of the Society casting any stigma. This Court had cautioned in its interim order in W.P.(C).No. 22460/2015 that no members against whom proceedings for surcharge are pending shall be included in the administrative committee. The discretion exercised by the Registrar in appointing the three members of the erstwhile managing committee of the Society in the administrative committee later cannot be faulted with. It is not for this Court under Article 226 of the Constitution of India to substitute the discretion by replacing the administrative committee with an administrator in the circumstances. The Registrar would have probably thought that the three members of the erstwhile managing committee are better conversant with the affairs of the Society. The three members were earlier elected by the will of the members of the Society and their continuance in the administrative committee might suit the convenience of all. The petitioner in W.P.(C). No. 23813/2015 pointed out that a complaint against one of the

members of the administrative committee is pending consideration with the Registrar. It is usual in a democratic set up to file complaints either to thwart one being appointed or to unseat an appointee and its mere preferment is no disqualification. After all the Registrar is well competent to remove the person (against whom the complaint is pending) from the administrative committee if it is found that the allegations are true. Mere baseless and unfounded allegations against the erstwhile members of the managing committee shall not act as a barrier for their inclusion in the managing committee. This distinguishes the case in W.A. No. 214/2014 relied on by the petitioner in W.P(C). No. 23813/2015 wherein the allegations hurled were quite serious in nature. About 26 identity cards were recovered from one member by the police in that case and the Secretary had also confessed of not having properly maintained the statutory registers. That is not the situation in the case on hand where only a complaint has been filed against one of the members of the managing committee

included in the administrative committee. I am not prepared to hold that the Registrar has exercised his discretion in a perverse manner in the constitution of an administrative committee warranting any interference.

Resultantly W.P.(C). No. 22460/2015 is allowed in part and W.P.(C). No. 23813/2015 is dismissed. No costs.

**V.CHITAMBARESH  
JUDGE**

DCS